



PECFA POST



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COMMERCE AND NATURAL RESOURCES DISCUSSIONS – STAYING ON TRACK

The Wisconsin departments of Commerce (Commerce) and Natural Resources (WDNR) staff met informally in regional meetings around the state in mid-October to discuss a variety of issues. While the main impetus for the meetings was the Comm 46/NR 746 requirement for yearly interagency staff training, both agencies agree that it makes sense to meet face-to-face to ensure consistency between both departments. The meetings, held in Wausau, Fitchburg and Milwaukee, focused mainly on bidding issues and to a lesser degree the GIS Registry (Registry) system.

The PECFA bidding process has gone through numerous changes over the years and the WDNR's involvement is now equal to Commerce's on WDNR managed sites. As a result, the two agencies are working more closely than ever to prepare bid specifications and follow through on PECFA funding approval issues. Still, the process and template documents have been developed by Commerce and the bidding is conducted through Commerce's website, so uncertainty can occur during the bidding. This meeting was meant to answer some of the questions staff have about sending sites to bid.

One item agreed to by both agencies in all regions was to be sure the costs consultants put in their bid take into account all tasks the departments are requiring. Commerce and WDNR staff will likely be more specific in the minimum remedial requirements section and state their expectations for specific detailed responses from consultants.

Both agencies are also concerned about assurances that the winning bidder completes the work scope outlined in the bid. Commerce indicated that some of these concerns will be resolved with revised Comm 47 language, which will be promulgated in 2005.

In Milwaukee, there were questions about how the proposed usual and customary cost (UCC) schedules will affect bidding. Even with UCC in place, discussions indicated that bidding will not go away, especially for WDNR sites, because active remediation is often required. Also in Milwaukee, staff agreed to have both agencies involved in WDNR sites as soon as possible to get the scopes of work and cost caps set. In Fitchburg, there was a reminder that some of the Registry packet information, such as the current deed, survey map and WTM coordinates, should be provided with the site investigation report. In Wausau, some participants would like to see more bidding rounds per year, with shorter bid timeframes.

As part of the meetings, the WDNR presented the latest version of the Registry on the web, and demonstrated tools for getting information from the maps. The next version of the Registry, which will hopefully be available in about a month, was also demonstrated.

Overall, the discussions were well received and very informative. It is anticipated that regional meetings between the two agencies will occur more often than just annually to promote further discussions on issues we deal with daily.

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NEW AUDIT/APPEAL PROCESS

Due to the loss of one of our legal counsel, Commerce has established a committee, made up of senior claim reviewers, to facilitate the appeal process.

For claims where the reviewer has determined that there are non-eligible costs every attempt will be made to obtain missing information before the claim is sent to the committee. When received, the committee will try to resolve the issues prior to making a reimbursement payment.

This is an effort by the Claim Review Section (Claims) to reduce the number of appeals, reduce the appeal backlog and be more consistent in review decisions.

CLAIMS NOW REQUIRE FORM 1A

As of October 1, 2004, Commerce requires that all claims include Form 1A, the Remedial Action Fund Disclosure Form. On this form, the signature of the project manager holds the consulting firm accountable for the information submitted in the claim. The purpose is to certify that the information is accurate and no fraudulent costs have been submitted. The form also holds the responsible party (RP) accountable by ensuring that they are made aware of the costs being submitted, and requires their signature certifying that the information in the claim is accurate.

If claims are submitted without Form 1A, the submitter will be contacted and asked to provide the completed form. Claims may be returned if there is a significant delay in receipt of the form.

UPDATE ON RULE CHANGES TO ADMINISTRATIVE CODE COMM 47

The public hearing held July 15, 2004 generated numerous detailed comments. Since that date, Commerce has been responding to each and every comment. After Commerce has completed responses, a draft of the proposed changes to chapter Comm 47 will be mailed two weeks prior to the next External Advisory Committee meeting. Time will be allowed for final comments, after which the Rule will be presented to the legislature for review and approval. When approved, the estimated timeframe for Rule implementation is the summer of 2005.

PECFA Post circulation and a request for Topics of Concern

We are continuing to move toward total electronic distribution of the *PECFA Post*. To subscribe electronically go to <http://commerce.state.wi.us/ER/ER-PECFA-News.html> - #PecfaPost and scroll down to the subscribe box. You will receive an email to confirm your email address. Upon confirmation you will have been added to the electronic distribution list. If you do not have e-mail, you may call, (920) 303-5410, or write Beth Erdman at ERS Division, Bureau of PECFA, 2129 Jackson Street, Oshkosh WI 54901 and request to be placed on a mailing list.

We are always happy to receive suggestions for future *Post* topics or comments on current articles. Please use contact Beth Erdman at berdman@commerce.state.wi.us or mail suggestions or topics to the address listed above.

USUAL AND CUSTOMARY COST SCHEDULE

THOUGHTS FROM THE PUBLIC HEARING COMMENTS: CLARIFICATION OF PURPOSE

While developing responses to the public hearing comments on proposed changes to Comm 47, it became apparent to the PECFA internal Usual and Customary subcommittee that there may be some misconceptions regarding the purpose of the proposed UCC schedule. The intent of this article is to provide some clarity.

First, let's take a look at the results of competitive bidding for commodity services. This program requirement has been in effect since February 1993. Competitive bidding has significantly reduced commodity service costs to the PECFA program, especially those for laboratory services, without compromising service or quality. Originally, the program was reimbursing up to \$150.00 per volatile organic compound (VOC) sample. The commodity bidding has reduced that cost to \$45 - \$50 per sample. WECARE Witness No. 2 (January 1999) summed it up: "Hardcore—no BS—competition, along with good old-fashioned ingenuity and hard work paid off for the labs that outlasted the rest, and ended up benefiting both the profession and the State of Wisconsin."

Second, competitive public bidding for sites became effective in April 1998. Since November 1999, sites with costs greater than \$60k have been required to go through competitive public bidding. The previous comment about commodity bidding can also be said for the cost for services for sites that have been through the competitive public bidding process. Thirty three rounds of competitive public bidding have been completed over the past five years, and a comparison of winning bid amounts with non-bid amounts (amounts taken from claims) clearly shows that the process has resulted in lower project costs and cleanups continuing to be completed.

So, why the discussion about competitive bidding, when the topic is the UCC schedule? The original premise for the statutory requirement to develop a UCC schedule was for a stand-alone mechanism to reduce program costs. However, considering the aforementioned findings of competitive bidding, it became clear that competitive public bidding, not the UCC schedule, will do a far better job at reducing program costs. The UCC subcommittee has considered the direct financial impact that the UCC schedule would have on the program and concludes that it will be secondary to public bidding. Public bidding is viewed as the primary means for reducing program costs. In Commerce's review of the hearing comments, it was learned that the Minnesota PETROFUND has come to a similar conclusion in their program.

Consequently, the primary purpose of the UCC schedule and its accompanying rules is to control program costs and at the same time provide a mechanism for all claimants to proceed with necessary investigation or remedial activities until either the site's priority ranking under the proposed rules places the site in a bidding round, or closure is achieved. In summary, the UCC schedule is expected to function as a funding bridge to closure or public bidding, while meeting the intent of section 101.143 of the Wisconsin statutes.

ANNUAL REPORTING FOR 2004 - DELAYED

You did not miss your reminder and the Bureau of PECFA did not forget to send out the reminder requesting that responsible parties (RPs) and/or consultants complete the annual reporting for 2004. The Bureau is currently working to minimize duplication of efforts regarding reporting requirements. Because of this, the Annual Reporting for 2004 is expected to be delayed until early 2005. Thank you for your patience!

FOLLOW-UP TO THE 50K MILESTONE DEADLINE

(Reference previous PECFA Post, Volume 4, Issue 2)

Claims sent letters on February 26, 2004, requesting RPs to submit claims that met the \$50,000 (50K) milestone guidelines. The letters were then followed up with a phone call from Claims. Unfortunately, this process has not been successful and Commerce is now implementing a more aggressive approach.

On August 27, 2004, the claim section sent letters informing RPs that claims in the above category must be received by January 3, 2005 (124 days for submittal) or interest costs, from January 4, 2005, until the date the claim is received, will not be eligible for reimbursement.

Sites that achieve conditional closure, final closure, or a no further action status between August 27, 2004, and January 3, 2005, and have received the August 27, 2004 letter, will have 120 days after conditional closure to submit the claim without jeopardizing the interest.

All other sites that have been granted site closure or no further action status must submit a claim within 120 days after the receipt of that notification or interest after 60 days from that date will not be reimbursed.

IMPORTANT REMINDER TO CONSULTANTS

Commerce Administrative Rules COMM 5 and COMM 47 require that consulting firms and individual consultants be registered with Commerce in order to do work in the PECFA program. The PECFA program will require that individuals performing the role of project manager sign the Form 1A and provide their Commerce registration number.

PECFA staff will be checking to make sure all registrations are current. COMM 47.40(1)(b) grants PECFA the authority to deny costs for services performed if consultant and consulting firms fail to register with the program. In addition, proof of required insurance [COMM 5.80(4)(b) and 5.81(3)] will be verified at the time initial registration or renewal.

CONDITIONAL CLOSURES NOT COMPLETED: UPDATED LIST

The July 2004 issue of the PECFA Post, it was reported that a web page had been created containing a list of sites that were conditionally closed prior to January 15, 2004, but as of that date, the final closure requirements had not been completed. The list has been updated and sites that have met conditions of final closure have been removed. The list can be accessed at <http://commerce.wi.gov/wps/er/content/pdf/ER-PECFA-ConditionalClosureList11-19-04.pdf>.

Many consultants and RPs for sites still on the list have contacted Commerce and relayed their intentions to fulfill the conditions; others have not. You are encouraged to make every effort to fulfill the conditions of closure. The July 2004 PECFA Post article outlines reasons why fulfilling conditions of closure are important and necessary.

Commerce is evaluating a number of enforcement actions for sites that do not comply in a timely manner. Responsible parties who are having difficulty completing conditional closure requirements are asked to contact Bureau of PECFA site reviewers to resolve the problems.

REDEVELOPED PECFA SITES

Do you know of PECFA sites that are redeveloped, are presently being redeveloped or are in the planning stages of being redeveloped? If so, Commerce wants to hear from you. Examples of redeveloped PECFA funded sites are: parks/greenspace, commercial buildings, hotels/motels, residences, government buildings, and gas stations and/or convenience stores.

To notify Commerce of PECFA redeveloped sites, please contact Brian Taylor via e-mail at btaylor@commerce.state.wi.us or by phone at (608) 266-0593. When contacting Brian, please provide, at a minimum, the following information: Commerce and/or BRRTS number; site name; site address and a description of the redevelopment. Furthermore, please indicate if before and/or after redevelopment photographs are available.

HERE COMES THE JUDGE

Commerce welcomes attorney Steve Wickland to the position of Administrative Law Judge (ALJ). Mr. Wickland handled environmental cases for many years for the State of Wisconsin Department of Justice as an assistant attorney general. He conducted trial work for the State, often on behalf of state agencies, as well as appellate matters in the court of appeals and state supreme court.

Steve is a graduate of Lawrence University and the University of Wisconsin Law School. He is active in the 500-member State Bar Environmental Law Section, having previously served as chair and currently as a member of its board of directors.

As an ALJ, Steve will hear appeals with regard to PECFA cases eligible for PECFA reimbursement. If Commerce determines that some costs submitted by a claimant are not eligible for PECFA reimbursement, an appeal may be filed. If the appeal is not resolved through negotiation, a hearing may be held in which an ALJ hears testimony from both the claimant and Commerce staff. After receiving the evidence, the ALJ makes a final (or proposed) decision.

PECFA PROGRAM ASSISTANT GETS MARRIED

The Commerce, Bureau of PECFA would like to extend warm, and much deserved, congratulations to Kristi Prindle! Who is Kristi Prindle you ask? She was formerly known as Kristi Hammes. Kristi was married on October 9, 2004 in the Madison area. Kristi can be contacted by telephone at (608) 267-3753, and by email at: kprindle@commerce.state.wi.us.

FAREWELL TO JOHN KISIEL

John Kisiel, Legal Counsel, has accepted a new position with the Wisconsin Builders Association. Mr. Kisiel joined Commerce in February 2000 and was instrumental in the PECFA program's reduction in appeals. His quick-wit and enthusiasm will be missed. Commerce would like to wish John a warm farewell and great success in his new career.

WINTER GROUNDWATER SAMPLING IN WISCONSIN

The time of year is fast approaching when you inevitably will be kneeling, bucket by your side, rigorously or gently jiggling the line, and a curious passerby stops to ask "whatcha fishin'".

for?” or “what are they biting on?” You politely smile and bring up the line to show them. No, there is not a glistening slab bluegill or lunker northern pike on the line; it is a bailer full of groundwater.

Much like ice fishing, winter groundwater sampling in Wisconsin requires careful planning and sound preparation for success. One of the most important preparatory steps for winter groundwater sampling fun is to have an accurate map of your well locations. Whether by walking wheel, compass, landmarks, or GPS, now is the time to make sure you identify the location of those little “honey-holes.” That sinking feeling of knowing you have a properly constructed NR141 monitoring well sitting out there – somewhere- ready for that sampling event but not being able to find it because of an inaccurate map is as frustrating as leaving your wax worms in the fridge. And even worse, trying to explain why you could not provide a sample from that key monitoring well is disheartening and expensive if closure is not granted because of it.

Speaking of the big one that got away; once you get those bolts off the well protector, be it by spudbar or blowtorch, be especially vigilant to tie those bailers on tight. Though the digits may be numb and the wind may be howling, an extra square knot on the bailer stem can make all the difference between the line going slack (bailer and time lost) and “catching” that important sample.

So what does one do if they do lose a bailer in a well? Many take the fishing analogies to the limit - off to the hardware store, ready and raring to throw that Rapala, assorted package of treble hooks, and airline guide wire on their company credit card. Others make their attempt at modern art with a coat hanger to fish it out. Others surprise the next visitor to the hole and leave them scratching their head as to how four feet of “sediment” collected in the well since the last sampling event. Moral of the story: tie those bailers on tight to avoid becoming another big fish story!

Other winter sampling nightmares:

- Counting on that metal detector to find that aluminum well protector in the snow
- Trying to warm well protector bolts with tongue rather than blowtorch (circa The Christmas Story)
- Leaving the sampling truck running with the exhaust right over the monitoring well and wonder why samples come back with “other” contaminants
- Well protectors everywhere (snowplow hockey)
- A ten foot king-o-the-hill snow pile over the source well

Have an efficient and safe winter sampling season!

THE WISCONSIN DEPARTMENT OF COMMERCE, BUREAU OF PECFA, WOULD LIKE TO WISH YOU AND YOURS A VERY SAFE AND HAPPY HOLIDAY SEASON!!!

PECFA SITE REVIEW ZONE CONTACT INFORMATION

| | | | |
|---|--|---|---|
| <p>Bureau Director Oscar Herrera (608) 266-7605 WI Dept Of Commerce 201 W Washington Ave PO Box 8044 Madison WI 53708-8044</p> | | <p>Section Chief Site Review Section Vacant</p> | |
| <p>Program Assistant Cathy Voges (608) 261-7717 WI Dept Of Commerce 201 W Washington Ave PO Box 8044 Madison WI 53708-8044</p> | | <p>Program Assistant Kristi Prindle (608) 267-3753 WI Dept Of Commerce 201 W Washington Ave PO Box 8044 Madison WI 53708-8044</p> | |
| <p>ZIP CODE STARTING WITH:</p> | | <p>CONTACT INFO (click on project manager name to send email):</p> | |
| <p>530, 531, 532, 534</p> | | <p>Lee Delcore (414) 220-5403 Stephen Mueller (414) 220-5402 Jennifer Skinner (414) 220-5373 Greg Michael (414) 220-5375 Monica Weis (414) 220-5361 Linda Michalets (414) 220-5376</p> | <p>WI Dept of Commerce 101 W Pleasant St Suite 100A Milwaukee WI 53212-3963 FAX 414-220-5374</p> |
| <p>535</p> | | <p>Ralph Smith (608) 261-6543 Alan Hopfensperger (608) 266-0562</p> | |
| <p>537, 538</p> | | <p>Eric Scott (608) 266-8516 Andrew Alles (608) 261-8509 Jon Heberer (608) 261-5405</p> | <p>WI Dept Of Commerce 201 W Washington Ave PO Box 8044 Madison WI 53708-8044 FAX 608-267-1381</p> |
| <p>539, 546</p> | | <p>David Swimm (608) 264-8766 Gena Larson (608) 261-5404</p> | |
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| <p>545</p> | | <p>David Blair (608) 261-2515</p> | |
| <p>548</p> | | <p>Will Myers (608) 261-7718</p> | |
| <p>544</p> | | <p>Brian Taylor (608) 266-0593</p> | |
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| <p>549*</p> | | <p>Robert Klauk (920) 424-0046</p> | <p>WI Dept Of Commerce 2129 Jackson St Oshkosh WI 54901-1805 FAX 920-424-0217</p> |
| <p>549*</p> | | <p>Tom Verstegen (920) 424-0025</p> | |
| <p>541</p> | | <p>Beth Erdman (920) 303-5410</p> | |

*Outagamie, Winnebago, Fond du Lac Counties are project managed by Robert Klauk and the remainder of 549 sites including the City of New London are managed by Dee Zoellner.

PECFA CLAIM REVIEW CONTACT INFORMATION

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|--|--|--|--|
| <p>Bureau Director Oscar Herrera (608) 266-7605 WI Dept Of Commerce 201 W Washington Ave PO Box 8044 Madison WI 53708-8044</p> | | <p>Section Chief Claim Review Section Dennis Legler (608) 267-7642 WI Dept Of Commerce 201 W Washington Ave PO Box 7838 Madison WI 53707</p> | |
| Position | CONTACT INFO (click on claim reviewer name to send email): | | |
| Claim Review | <p>Jean Beckwith (608) 266-6796 Linda Collier-Thompson (608) 267-5264 Rosemary Fiscus (608) 267-2001 Russel Haupt (608) 267-7538 Lorraine Narvaez (608) 261-7716 Tim Prosa (608) 261-7715</p> | | |
| Initial Claim Eligibility | <p>Renee Dickey (608) 264-8765</p> | | |
| Commodity Bid Waivers | <p>Mary Ann Gosda (608) 266-9420</p> | <p>WI Dept of Commerce 201 W Washington Ave PO Box 7838 Madison WI 53707 FAX 608-267-1381</p> | |
| Appeals Field Audit | <p>James Moser (608) 267-1394</p> | | |
| Appeals Coordinator-Initial Contact for Appeals | <p>Laura Pleasants (608) 261-2511</p> | | |
| Initial Claim Review | <p>Diane Ploessl (608) 261-7723</p> | | |
| Appeals and Emergency Action | <p>Darin Powers (608) 261-6544</p> | | |
| Financial Manager-Payment Issues | <p>Dottie White (608) 266-3713</p> | | |
| Program Assistant | <p>Kristi Prindle (608) 267-3753</p> | <p>WI Dept of Commerce 201 W Washington Ave PO Box 8044 Madison WI 53708 FAX 608-267-1381</p> | |
| Field Auditor | <p>Carl Kramer (262) 638-7247</p> | <p>WI Dept of Commerce PO Box 081246 Racine WI 53408 FAX 414-638-7247</p> | |